(Pa.) 104, 11 W. N. C. (Pa.) 391; TYLER ON FIXTURES, 402; BRONSON ON FIXTURES, 258; 13 AM. & ENG. ENCYC. OF LAW, 666 (2d ed.). There seem to be very few adjudications as to whether or not window screens, when attached to a house, are personalty or fixtures. As between mortgagor and mortgagee, they have been held to be personalty. *Hall* v. *Law Guar. & Trust Soc.*, 22 Wash. 305, 60 Pac. 643; BRONSON ON FIXTURES, 297.

TORT—DEATH BY WRONGFUL ACT—IMPUTABLE NEGLIGENCE.—An infant two and a half years old wandered off without knowledge of his parents, and was so injured by defendant's train that he died. In this action for damages for the alleged wrongful death of the child, brought by a parent as administrator, *Held,* that the parent's contributory negligence is available as a defense. *Davis* v. *Sea Board Air Line Ry.* (1904), — N. C. —, 48 S. E. Rep. 591.

This action was brought under Code § 1498, giving a right of action for wrongful death. The real point in the case was whether the negligence of the parents would be imputed to the child. It cannot be so imputed in an action in behalf of the infant. *Bottoms* v. *R. R.*, 114 N. C. 699, 19 S. E. 730, 25 L. R. A. 784. See 1 MICHIGAN LAW REVIEW, p. 233, 2 Id., p. 735. The different rule laid down in *Hartfield* v. *Roper,* 21 Wendell 615, 34 Amer. Dec. 273, and often referred to as the New York rule, is rejected by a majority of the states. *Newman* v. *R. R.*, 52 N. J. Law 446, 19 Atlantic 1102, 8 L. R. A. 842; *Robinson* v. *Cone,* 22 Vt. 213, 54 Amer. Dec. 67; BEACH CON. NEG., § 42; BISHOP, NON-CONTRACT LAW, § 582. But the contributory negligence of the parent may be pleaded when the parent is bringing the action as a beneficiary. *Westerberg* v. *R. R.*, 142 Pa. 471, 21 Atlantic 878, 24 Am. St. Rep. 510; *R. R.* v. *Wilcox,* 138 Ill. 370, 27 N. E. 899, 21 L. R. A. 76; TIFFANY, DEATH BY WRONGFUL ACT, § 69; BEACH CON. NEG., § 44; *Wolf* v. *R. R.*, 55 Ohio. St. 530, 45 N. E. 708, 36 L. R. A. 812. And except in Iowa, Louisiana and Virginia, such negligence is a defense though the action be brought by an administrator, if the negligent parent is the real beneficiary. But in these three states the damages arising from wrongful death survive and become a part of the estate of the deceased. *Wymore* v. *Mahaska Co.*, 78 Ia. 396, 16 Am. St. Rep. 449; *N. & W. R. R.* v. *Groseclose's Adm'r.*, 88 Va. 267, 13 S. E. 454; *Westerfield* v. *Levi Bros.*, 43 La. Ann. 66. The court refers in passing to a question which might arise where one parent is guilty of contributory negligence and the other is not. Few courts seem to have passed upon the point, but in two states, at least, it has been decided that the contributory negligence of one beneficiary will not defeat the action of others who were not negligent. *Wolfe* v. *R. R.*, 55 Ohio St. 517, 45 N. E. 708; *R. R.* v. *Gravitt,* 93 Ga. 369, 26 L. R. A. 553. Both of these actions were brought under statutes. The contrary opinion would rest upon the theory of "identity" or agency, which is not generally accepted.

WILLS—CONDITION AGAINST CONTEST.—Where a will contained a bequest, in trust for a son of testatrix, and provided for the forfeiture of any beneficiary's share who should contest the will, such share to be given over to other specified persons and the son instituted an unsuccessful contest, *Held,* (two justices dissenting) that since there was probable cause for contesting